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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

5 | In the Matter of:

6 FLETCHER INTERNATIONAL, LTD., Lead Case No.
7 Debtor. 12-12796-reg

RICHARD J. DAVIS,

10 Plaintiff, Adv. Pro. No.
11 - v - 13-01527-reg

12 | KASOWITZ BENSON TORRES & FRIEDMAN LLP

13 Defendants.

20 | January 16, 2014

21 | 10:05 AM

23 | B E F O R E:

24 | HON. ROBERT E. GERBER

25 | U.S. BANKRUPTCY JUDGE

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2 **1) Pre-Trial Conference**

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16 BY: STEPHAN E. HORNUNG, ESQ.

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19 Also Appearing:

20 Alphonse Fletcher (TELEPHONICALLY)

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PROCEEDINGS

2 THE COURT: The Fletcher International, Kasowitz
3 Benson, Dakota suit. I have Mr. Hornung and Mr. Zinman?

4 MR. HORNUNG: That's correct, Your Honor.

THE COURT: Okay. Who wants to take the lead?

6 | TELEPHONIC VOICE: Mr. Fletcher.

THE COURT: Mr. Fletcher, you're on the phone?

8 MR. FLETCHER: Yes, I am, sir.

9 MR. HORNUNG: Your Honor, we were in here November
10 21st. At that time --

11 THE COURT: Forgive me, Mr. Hornung. Pull that mic
12 nice and close to you, please.

13 MR. HORNUNG: Oh, sure.

14 THE COURT: I don't know if I have the ability to
15 adjust the volume on your mic.

16 MR. HORNUNG: We were before Your Honor in November
17 21st for a pre-trial conference. At that point, it was just
18 myself on behalf of Mr. Davis and Mr. Zinman on behalf of
19 Kasowitz. Earlier that week, they had commenced a third-party
20 action and filed their answer. The third-party action was
21 against Mr. Fletcher who's on the phone, as well as Fletcher
22 Asset Management.

23 Kasowitz and Mr. Davis have begun discovery; we've
24 exchanged document requests. But you had asked us to appear
25 back after the holiday when Mr. Fletcher and FAM had been

1 served, and that's where we are right now.

2 THE COURT: Okay. Are the three sides of the triangle
3 coordinating with each other on any discovery?

4 MR. HORNUNG: At this point, we have not heard from
5 Mr. Fletcher or FAM. It's my understanding that they have not
6 yet answered the case or appeared other than -- the first time
7 is today.

8 THE COURT: Um-hum. Mr. Zinman, let me get your
9 perspective and then I'll hear from Mr. Fletcher.

10 MR. ZINMAN: My friend's comments are correct.

11 There's been no answer to our third-party complaint by either
12 Fletcher Asset Management or Mr. Fletcher. And the summonses
13 were served on or about November 22nd.

14 THE COURT: November 27th?

15 MR. ZINMAN: 2nd -- 22, Your Honor.

16 THE COURT: Just before or around Thanksgiving time?

17 MR. ZINMAN: Yeah, that's correct, Your Honor.

18 THE COURT: And when you said the summons, you were
19 talking about on the third-party complaint?

20 MR. ZINMAN: Correct, correct.

21 And the -- specifically, the third-party summons, the
22 answer to the complaint and the third-party complaint. And --

23 THE COURT: When was an answer due -- an answer or a
24 motion due on your third-party complaint?

25 MR. ZINMAN: I'm trying to figure out. I think it's

1 past due, Your Honor. I haven't actually sat down and figured
2 out the date. Off the top of my head, I think -- thirty-five
3 days, I think, the end of December, beginning of January,
4 maybe.

5 THE COURT: Um-hum.

6 MR. ZINMAN: And Mr. Fletcher is on the phone, so the
7 only other -- in terms of document discovery, we may be in a
8 position at some point -- the production is not due to the
9 trustee until a week from Friday. And -- or is it two weeks
10 from --

11 THE COURT: Production of what? Documents you owe the
12 Fletcher trustee on the portion of the suit against Kasowitz
13 Benson?

14 MR. ZINMAN: Correct, Your Honor. And we're still
15 working through some of the somewhat thorny potentially
16 privilege issues, and so we may need a protective order. But
17 we'll be back to you by letter or otherwise if we need to do
18 so.

19 THE COURT: Um-hum, okay.

20 Mr. Fletcher, if I have heard Mr. Zinman correctly,
21 your time to answer the third-party compliant has come and
22 gone. What's going on?

23 MR. FLETCHER: I believe he's correct about that.
24 We -- as I testified in the Soundview case, obviously I'm the
25 substance of these issues; I disagree strongly with the various

1 allegations. I can report that I was successful in retaining
2 an attorney to respond to the Kasowitz v. Fletcher Asset
3 Management and Alphonse Fletcher case in state court, and we're
4 just completing an answer to that today. And that attorney may
5 be able to appear for Fletcher Asset Management in this case,
6 but I am still working on the retainer and engagement details.

7 THE COURT: Well, this case isn't as complicated as
8 some of the other litigation involving Fletcher International,
9 Ltd. of Bermuda and the Soundview entities. I'm not of a mind
10 to make you a defendant without having buttoned up the
11 retention of a lawyer, but I can't let it drift very long, Mr.
12 Fletcher.

13 When do you think you or your lawyer would be able to
14 file the answer in this case?

15 MR. FLETCHER: We cannot say with much confidence
16 other than to say that if you set a deadline, I will do my best
17 to get everything done by that date.

18 THE COURT: All right.

19 Gentlemen, my sense tells me that the issues in this
20 case are not likely to be addressed by motion; it's going to
21 require -- or at least a motion as a matter of law. And what
22 we're more likely talking about is either summary judgment or
23 more likely at least vi-a-vis -- no; I'll leave it at that.
24 But we need to get going with discovery and although the amount
25 in controversy in this case is not as big as many of the other

1 matters in the Fletcher cases, I can't neglect this case,
2 either.

3 So here's what we're going to do. Mr. Fletcher, I'm
4 giving you and your lawyer thirty calendar days to answer and
5 move or otherwise respond to the Kasowitz third-party
6 complaint. If I get an affidavit telling me that more time is
7 required, I'll consider a further extension. But the case has
8 to move forward.

9 At the same time, while you, Mr. Fletcher, would be
10 entitled to the advice of your lawyer on any documents you
11 would have to produce vis-a-vis the third-party compliant in
12 the Dakota litigation, there is not a good reason for staying
13 the entirety of the discovery in this case. So, Mr. Hornung,
14 you're to work with Mr. Zinman on working on the discovery that
15 doesn't require Mr. Fletcher's participation, neither by
16 producing documents or by telling Mr. Zinman his position vis-
17 a-vis claims or privilege.

18 If and when you run up against a wall on that and the
19 time for Mr. Fletcher's answer still hasn't run, you can get
20 back to me with a conference call and say it's time for the
21 train to leave the station. This way I can try to give Mr.
22 Fletcher a fair opportunity to defend himself without bringing
23 the whole litigation to a halt.

24 At some point, all three of you, I'm going to want a
25 stip or consent order prepared that lays out the discovery

1 schedule. But as it's arguable that Kasowitz Benson is in the
2 middle of this chain right now, I don't think it's even fair to
3 ask Kasowitz to do it, much less Mr. Fletcher to do it until we
4 have everybody having appeared in starting to work this case.

5 Any further thoughts from any of the three of you?

6 Starting with you, Mr. Hornung?

7 MR. HORNUNG: I don't believe so, Your Honor. The one
8 thing I would just note, we will probably be asking Your Honor
9 for a protective order, just some confidentiality issues.
10 Either we'll see if we can just use the existing protective
11 order in the main case, and if not, we'll put something
12 together for this case.

13 THE COURT: If it's a consensual protective order,
14 that's no big deal and you can just do it by e-mailing my
15 chambers a word processing form to be so ordered by me, if each
16 of you and Mr. Zinman and Mr. Fletcher are on board.

17 MR. HORNUNG: Okay, thank you.

18 THE COURT: Okay. Mr. Zinman, anything further from
19 your end?

20 MR. ZINMAN: No, Your Honor.

21 THE COURT: Okay. Mr. Fletcher?

22 MR. FLETCHER: My only question would be whether I'll
23 be kept informed of whatever documents might be exchanged
24 between the other two parties.

25 THE COURT: All three parties are to share all

1 documents with each other in the absence of an order from me.

2 Anything else?

3 Okay, Mr. Fletcher, you're free to drop off the line

4 if this is the only matter involving you. And you, Mr.

5 Hornung, you, Mr. Zinman, can either stay or leave as you see

6 fit.

7 MR. HORNUNG: Thank you, Your Honor.

8 MR. FLETCHER: Thank you.

9 MR. ZINMAN: Thank you.

10 (Whereupon these proceedings were concluded at 10:16 AM)

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RULINGS

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Page Line

6 Deadline of thirty calendar days given 8 5
7 to Fletcher for an answer to Kasowitz
8 third-party complaint

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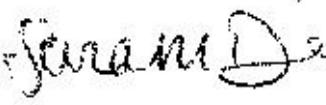
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